

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOHN MCDONNELL
2380 Vista Ridge Lane
Signal Hill, CA 90755

Registered Nurse License No. 488833

Respondent

Case No. 2007-196

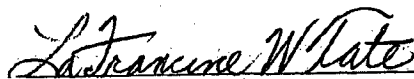
OAH No. L2007080873

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on November 7, 2008.

IT IS SO ORDERED October 7, 2008.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KAREN L. GORDON, State Bar No. 137969
Deputy Attorney General
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8 Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 JOHN MCDONNELL, R.N.
2380 Vista Ridge Lane
14 Signal Hill, CA 90755

15 Registered Nurse License No. 488833

16 Respondent.

Case No. 2007-196

OAH No. L2007080873

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
22 the Board of Registered Nursing. She brought this action solely in her official capacity and is
23 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
24 by Karen L. Gordon, Deputy Attorney General.

25 2. Respondent John McDonnell, R.N. (Respondent) is represented in this
26 proceeding by Attorney Ronald D. MacGregor, whose address is 1000 Quail Street, Suite 170
27 Newport Beach, CA 92660.

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3. On or about March 31, 1993, the Board of Registered Nursing issued Registered Nurse License No. 488833 to John McDonnell, R.N. (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2007-196 and will expire on April 30, 2009, unless renewed.

JURISDICTION

4. Accusation No. 2007-196 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 7, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2007-196 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2007-196. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 2007-196.

4 9. Respondent agrees that his Registered Nurse License is subject to
5 discipline and he agrees to be bound by the Board of Registered Nursing (Board)'s imposition of
6 discipline as set forth in the Disciplinary Order below.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Board of Registered
9 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the
10 Board of Registered Nursing may communicate directly with the Board regarding this stipulation
11 and settlement, without notice to or participation by Respondent or his counsel. By signing the
12 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
14 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
15 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
16 action between the parties, and the Board shall not be disqualified from further action by having
17 considered this matter.

18 11. The parties understand and agree that facsimile copies of this Stipulated
19 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
20 force and effect as the originals.

21 12. In consideration of the foregoing admissions and stipulations, the parties
22 agree that the Board may, without further notice or formal proceeding, issue and enter the
23 following Disciplinary Order:

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Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

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1 3. **Report in Person.** Respondent, during the period of probation, shall
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives.

4 4. **Residency, Practice, or Licensure Outside of State.** Periods of
5 residency or practice as a registered nurse outside of California shall not apply toward a reduction
6 of this probation time period. Respondent's probation is tolled, if and when he resides outside of
7 California. Respondent must provide written notice to the Board within 15 days of any change of
8 residency or practice outside the state, and within 30 days prior to re-establishing residency or
9 returning to practice in this state.

10 Respondent shall provide a list of all states and territories where he has ever been
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
12 provide information regarding the status of each license and any changes in such license status
13 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
14 new nursing license during the term of probation.

15 5. **Submit Written Reports.** Respondent, during the period of probation,
16 shall submit or cause to be submitted such written reports/declarations and verification of actions
17 under penalty of perjury, as required by the Board. These reports/declarations shall contain
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation
19 Program. Respondent shall immediately execute all release of information forms as may be
20 required by the Board or its representatives.

21 Respondent shall provide a copy of this Decision to the nursing regulatory agency
22 in every state and territory in which he has a registered nurse license.

23 6. **Function as a Registered Nurse.** Respondent, during the period of
24 probation, shall engage in the practice of registered nursing in California for a minimum of 24
25 hours per week for 6 consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of registered
27 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
28 work in any non-direct patient care position that requires licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
3 Board.

4 If Respondent has not complied with this condition during the probationary term,
5 and Respondent has presented sufficient documentation of his good faith efforts to comply with
6 this condition, and if no other conditions have been violated, the Board, in its discretion, may
7 grant an extension of Respondent's probation period up to one year without further hearing in
8 order to comply with this condition. During the one year extension, all original conditions of
9 probation shall apply.

10 **7. Employment Approval and Reporting Requirements.** Respondent
11 shall obtain prior approval from the Board before commencing or continuing any employment,
12 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
13 performance evaluations and other employment related reports as a registered nurse upon request
14 of the Board.

15 Respondent shall provide a copy of this Decision to his employer and immediate
16 supervisors prior to commencement of any nursing or other health care related employment.

17 In addition to the above, Respondent shall notify the Board in writing within
18 seventy-two (72) hours after he obtains any nursing or other health care related employment.
19 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
20 or separated, regardless of cause, from any nursing, or other health care related employment with
21 a full explanation of the circumstances surrounding the termination or separation.

22 **8. Supervision.** Respondent shall obtain prior approval from the Board
23 regarding Respondent's level of supervision and/or collaboration before commencing or
24 continuing any employment as a registered nurse, or education and training that includes patient
25 care.

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Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

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Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

1 12. **Violation of Probation.** If Respondent violates the conditions of his
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
3 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
4 license.

5 If during the period of probation, an accusation or petition to revoke probation has
6 been filed against Respondent's license or the Attorney General's Office has been requested to
7 prepare an accusation or petition to revoke probation against Respondent's license, the
8 probationary period shall automatically be extended and shall not expire until the accusation or
9 petition has been acted upon by the Board.

10 13. **License Surrender.** During Respondent's term of probation, if he ceases
11 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
12 probation, Respondent may surrender his license to the Board. The Board reserves the right to
13 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
14 take any other action deemed appropriate and reasonable under the circumstances, without
15 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
16 will no longer be subject to the conditions of probation.

17 Surrender of Respondent's license shall be considered a disciplinary action and
18 shall become a part of Respondent's license history with the Board. A registered nurse whose
19 license has been surrendered may petition the Board for reinstatement no sooner than the
20 following minimum periods from the effective date of the disciplinary decision:

21 (1) Two years for reinstatement of a license that was surrendered for any
22 reason other than a mental or physical illness; or

23 (2) One year for a license surrendered for a mental or physical illness.

24 14. **Physical Examination.** Within 45 days of the effective date of this
25 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
26 physician assistant, who is approved by the Board before the assessment is performed, submit an
27 assessment of the Respondent's physical condition and capability to perform the duties of a
28 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If

1 medically determined, a recommended treatment program will be instituted and followed by the
2 Respondent with the physician, nurse practitioner, or physician assistant providing written
3 reports to the Board on forms provided by the Board.

4 If Respondent is determined to be unable to practice safely as a registered nurse,
5 the licensed physician, nurse practitioner, or physician assistant making this determination shall
6 immediately notify the Board and Respondent by telephone, and the Board shall request that the
7 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
8 shall immediately cease practice and shall not resume practice until notified by the Board.
9 During this period of suspension, Respondent shall not engage in any practice for which a license
10 issued by the Board is required until the Board has notified Respondent that a medical
11 determination permits Respondent to resume practice. This period of suspension will not apply
12 to the reduction of this probationary time period.

13 If Respondent fails to have the above assessment submitted to the Board within
14 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
15 practice until notified by the Board. This period of suspension will not apply to the reduction of
16 this probationary time period. The Board may waive or postpone this suspension only if
17 significant, documented evidence of mitigation is provided. Such evidence must establish good
18 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
19 provided. Only one such waiver or extension may be permitted.

20 **15. Participate in Treatment/Rehabilitation Program for Chemical**
21 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary
22 period or shall have successfully completed prior to commencement of probation a Board-
23 approved treatment/rehabilitation program of at least six months duration. As required, reports
24 shall be submitted by the program on forms provided by the Board. If Respondent has not
25 completed a Board-approved treatment/rehabilitation program prior to commencement of
26 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
27 a program. If a program is not successfully completed within the first nine months of probation,
28 the Board shall consider Respondent in violation of probation.

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

16. **Abstain from Use of Controlled Substances and Psychotropic (Mood-Altering) Drugs.** Respondent shall completely abstain from the possession, injection or consumption by any route of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

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1 17. **Submit to Tests and Samples.** Respondent, at his expense, shall
2 participate in a random, biological fluid testing or a drug screening program which the Board
3 approves. The length of time and frequency will be subject to approval by the Board.
4 Respondent is responsible for keeping the Board informed of Respondent's current telephone
5 number at all times. Respondent shall also ensure that messages may be left at the telephone
6 number when he is not available and ensure that reports are submitted directly by the testing
7 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
8 to the Board by the program and Respondent shall be considered in violation of probation.

9 In addition, Respondent, at any time during the period of probation, shall fully
10 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
11 tests and samples as the Board or its representatives may require for the detection of alcohol,
12 narcotics, hypnotics, dangerous drugs, or other controlled substances.

13 If Respondent has a positive drug screen for any substance not legally authorized
14 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
15 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
16 from practice pending the final decision on the petition to revoke probation or the accusation.
17 This period of suspension will not apply to the reduction of this probationary time period.

18 If Respondent fails to participate in a random, biological fluid testing or drug
19 screening program within the specified time frame, Respondent shall immediately cease practice
20 and shall not resume practice until notified by the Board. After taking into account documented
21 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
22 Board may suspend Respondent from practice pending the final decision on the petition to
23 revoke probation or the accusation. This period of suspension will not apply to the reduction of
24 this probationary time period.

25 18. **Mental Health Examination.** Respondent shall, within 45 days of the
26 effective date of this Decision, have a mental health examination including psychological testing
27 as appropriate to determine his capability to perform the duties of a registered nurse. The
28 examination will be performed by a psychiatrist, psychologist or other licensed mental health

1 practitioner approved by the Board. The examining mental health practitioner will submit a
2 written report of that assessment and recommendations to the Board. All costs are the
3 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
4 result of the mental health examination will be instituted and followed by Respondent.

5 If Respondent is determined to be unable to practice safely as a registered nurse,
6 the licensed mental health care practitioner making this determination shall immediately notify
7 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
8 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
9 practice and may not resume practice until notified by the Board. During this period of
10 suspension, Respondent shall not engage in any practice for which a license issued by the Board
11 is required, until the Board has notified Respondent that a mental health determination permits
12 Respondent to resume practice. This period of suspension will not apply to the reduction of this
13 probationary time period.

14 If Respondent fails to have the above assessment submitted to the Board within
15 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
16 practice until notified by the Board. This period of suspension will not apply to the reduction of
17 this probationary time period. The Board may waive or postpone this suspension only if
18 significant, documented evidence of mitigation is provided. Such evidence must establish good
19 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
20 provided. Only one such waiver or extension may be permitted.

21 **19. Therapy or Counseling Program.** Respondent, at his expense, shall
22 participate in an on-going counseling program until such time as the Board releases him from this
23 requirement and only upon the recommendation of the counselor. Written progress reports from
24 the counselor will be required at various intervals.

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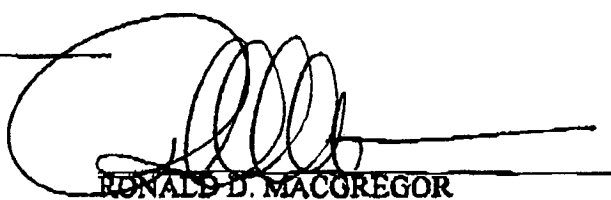
ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ronald D. MacGregor. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 6/11/08

JOHN McDONNELL, R.N.
Respondent

I have read and fully discussed with Respondent John McDonnell, R.N. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/11/08

RONALD D. MACGREGOR
Attorney for Respondent

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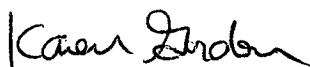
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 6-11-08

EDMUND G. BROWN JR., Attorney General
of the State of California

JAMES M. LEDAKIS
Supervising Deputy Attorney General



KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SD2005700954
McDonnell.Stipulation.wpd

Exhibit A

Amended Accusation No. 2007-196

1 EDMUND G. BROWN JR, Attorney General
of the State of California
2 JAMES M. LEDAKIS
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3 KAREN L. GORDON, State Bar No.137969
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8
9 Attorneys for Complainant

10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

15 JOHN MCDONNELL, R.N.
2380 Vista Ridge Lane
Signal Hill, CA 90755

16 Registered Nurse License No. 488833

17 Respondent.

Case No. 2007-196

OAH No. L-2007080873

AMENDED ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Amended
22 Accusation solely in her official capacity as the Executive Officer of the Board of Registered
23 Nursing, Department of Consumer Affairs.
24 2. On or about March 31, 1993, the Board of Registered Nursing issued
25 Registered Nurse License Number 488833 to John McDonnell, R.N. (Respondent). The
26 Registered Nurse License was in full force and effect at all times relevant to the charges brought
27 herein and will expire on April 30, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

5. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

....

(b) Considering suspension or revocation of a license under Section 490. Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

6. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree

1 of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 8. Section 2750 of the Code provides, in pertinent part, that the Board may
6 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
7 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

8 9. Section 2761 of the Code states:

9 The board may take disciplinary action against a certified or
10 licensed nurse or deny an application for a certificate or license for any
11 of the following:

12 (a) Unprofessional conduct, which includes, but is not limited to,
13 the following:

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15 (f) Conviction of a felony or of any offense substantially related
16 to the qualifications, functions, and duties of a registered nurse, in which
17 event the record of the conviction shall be conclusive evidence thereof.

18 10. Section 2762 of the Code states:

19 In addition to other acts constituting unprofessional conduct
20 within the meaning of this chapter [the Nursing Practice Act], it is
21 unprofessional conduct for a person licensed under this chapter to
22 do any of the following:

23 (b) Use any controlled substance . . . or alcoholic beverages,
24 to an extent or in a manner dangerous or injurious to himself or herself,
25 any other person, or the public or to the extent that such use impairs his
26 or her ability to conduct with safety to the public the practice authorized
27 by his or her license.

28 (c) Be convicted of a criminal offense involving the prescription,
consumption, or self-administration of any of the substances described in
subdivisions (a) and (b) of this section, or the possession of or falsification
of a record pertaining to, the substances described in subdivision (a) of this
section, in which event the record of the conviction is conclusive evidence
thereof.

11. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially
related to the qualifications, functions or duties of a registered nurse
if to a substantial degree it evidences the present or potential unfitness
of a registered nurse to practice in a manner consistent with the public
health, safety, or welfare.

12. California Code of Regulations, title 16, section 1445 states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

FIRST CAUSE FOR DISCIPLINE

**(April 8, 2004 Two Criminal Convictions for Driving While Under the Influence,
Driving with Blood Alcohol of .08% or more,
Hit and Run with Property Damage, and
Leaving the Scene of an Accident
— Crimes Committed November 18, 2003 and December 15, 2003)**

13. Respondent is subject to disciplinary action under sections 490 and 2761 (f) based on his convictions of crimes substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

14. On or about November 18, 2003, Respondent was arrested for driving while under the influence of alcohol, driving with a blood alcohol level of .08% or more, and having a concentration of alcohol in his blood of .20% or more by weight.

15. On or about December 15, 2003, Respondent was arrested again for driving while under the influence of alcohol and driving with a blood alcohol level of .08% or more. Respondent's arrest also included hit and run with property damage, leaving the scene of an accident, and no proof of auto insurance. Respondent had a blood alcohol level of .29% and left the scene of an accident without exchanging information.

16. On April 8, 2004, in the matter of *People v. John Frances McDonnell*, Orange County Superior Court, West Justice Center, Case No. 04WM 00205, Respondent was

1 convicted of both offenses on his plea of guilty to violations of Vehicle Code sections 16028(c)
2 (leaving the scene of an accident without providing information), 20002 (a) (hit and run), and
3 23152 (a) & (b) (Driving while under the influence with 0.08 percent or more alcohol in his
4 blood.)

5
6 17. Respondent was sentenced and placed on 3 years probation, ordered to
7 attend and participate in an alcohol rehabilitation program, and ordered to serve 60 days custody
8 in jail.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct)**

11 18. Respondent is subject to disciplinary action under section 2761 (a)
12 unprofessional conduct based on his convictions of crimes substantially related to the
13 qualifications, functions, and duties of a registered nurse as alleged above in paragraph 16.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Use of Dangerous Drugs and Alcoholic Beverages Which Impairs Abilities)**

16 19. Respondent is subject to disciplinary action under section 2762 (b) for use
17 of alcoholic beverages to an extent or in a manner dangerous or injurious to himself, any other
18 person, or the public or to the extent that such use impairs his ability to conduct nursing with
19 safety to the public as alleged above in paragraph 16.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Conviction of Criminal Offense Involving the Consumption of
22 Dangerous Drugs and Alcoholic Beverages)**

23 20. Respondent is subject to disciplinary action under section 2762 (c) for
24 convictions of criminal offenses involving the consumption of alcoholic beverages to an extent
25 or in a manner dangerous or injurious to himself, any other person, or the public or to the extent
26 that such use impairs his ability to conduct nursing with safety to the public as alleged above in
27 paragraph 16.

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 488833, issued
5 to John McDonnell, R.N.

6 2. Ordering John McDonnell, R.N. to pay the Board of Registered Nursing
7 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3; and

9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 6-11-08

12
13
14 Karen Gordon for
15 RUTH ANN TERRY, M.P.H., R.N.
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant

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